

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON,  
AT SEATTLE

WESTERN NATIONAL MUTUAL  
INSURANCE COMPANY, a foreign Insurer,

Plaintiff,

vs.

BALAJI LOGISTICS INC., a Washington  
corporation,

Defendant.

Cause No. 2:23-cv-1897

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

**I. PARTIES**

1.1 Plaintiff Western National Mutual Insurance Company (hereinafter “Western National”) is a foreign insurance company licensed to conduct business in the State of Washington. Western National is organized under the laws of Minnesota and has its principal place of business in Minnesota.

1.2 Defendant Balaji Logistics Inc. (hereinafter “Balaji Logistics”) is a Washington Corporation with its principal place of business in Washington.

## II. JURISDICTION AND VENUE

2.1 This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

2.2 Venue is proper in this Court under 28 U.S.C. § 1391 because the defendant resides in and a substantial number of the events or omissions giving rise to the claims occurred in the Western District of Washington.

2.3 This Court has the authority to determine the parties' respective rights and other legal obligations pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201. The dispute between the parties creates a justiciable controversy.

## III. FACTS

### A. The ACF Lawsuit

3.1 On or about July 27, 2023, Balaji Logistics filed an action captioned *Balaji Logistics Inc., dba Ponderosa Pacific v. ACF West Construction Company, Inc.*, King County Superior Court Cause No. 23-2-13883-0 SEA (hereinafter "ACF Lawsuit"), naming ACF West Construction Company, Inc. ("ACF") as defendant.

3.2 On or about August 23, 2023, ACF filed counterclaims against Balaji Logistics.

3.3 ACF alleged that Balaji Logistics failed to pay ACF for ACF's work pursuant to a contract between Balaji Logistics and ACF, and was thus damaged in the amount of \$177,208.59 plus interest.

3.4 Western National is providing a defense under a full reservation of rights to Balaji Logistics under an insurance policy issued to Balaji Logistics for all claims alleged against it in the ACF lawsuit.

**B. The Balaji Logistics CGL Policy**

3.5 Western National issued policy CPP 1266050 to Balaji Logistics Inc., effective from May 29, 2022 to May 29, 2023 (hereinafter “Balaji Logistics CGL Policy”). Ponderosa Pacific Inc. was also a named insured listed on the Policy’s Named Insured Schedule.

3.6 The Balaji Logistics CGL Policy included Commercial General Liability (hereinafter “CGL”) coverage, written on Form CG 00 01 04 13, with an occurrence limit of \$1,000,000, a General Aggregate Limit (Other than Products-Completed Operations) of \$2,000,000 and a Products-Completed Operations Limit of \$2,000,000.

3.7 The insuring agreement for Coverage A of the Balaji Logistics CGL Policy includes the following language:

**SECTION I – COVERAGES**

**COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

**1. Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **III** – Limits of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

b. This insurance applies to “bodily injury” and “property damage” only if:

- (1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;
- (2) The “bodily injury” or “property damage” occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

3.8 The Coverage A Exclusions include the following:

## 2. Exclusions

This insurance does not apply to:

### a. Expected or Intended Injury

“Bodily injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” resulting from the use of reasonable force to protect persons or property.

### b. Contractual Liability

“Bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an “insured contract”, provided the “bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an “insured contract”, reasonable attorneys’ fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages

because of “bodily injury” or “property damage”, provided:

- (a) Liability to such party for, or for the cost of, that party’s defense has also been assumed in the same “insured contract”; and
- (b) Such attorneys’ fees and litigation expenses are for defense of that party against civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

\* \* \*

**j. Damage To Property**

“Property damage” to:

- (5) That particular part of real property on which you or any subcontractors working directly or indirectly on your behalf are performing operations, if the “property damage” arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because “your work” was incorrectly performed on it.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to “property damage” included in the “products-completed operations hazard”.

**k. Damage To Your Product**

“Property damage” to “your product” arising out of it or any part of it.

**l. Damage To Your Work**

“Property damage” to “your work” arising out of it or any part of it and included in the “products-completed operations hazard”.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage To Impaired Property Or Property Not Physically Injured**

“Property damage” to “impaired property” or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in “your product” or “your work”; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to “your product” or “your work” after it has been put to its intended use.

3.9 The Balaji Logistics CGL Policy includes the following definitions:

## SECTION V – DEFINITIONS

\* \* \*

- 3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

\* \* \*

- 8. “Impaired property” means tangible property, other than “your product” or “your work”, that cannot be used or is less useful because:

- a. It incorporates “your product” or “your work” that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement; if such property can be restored to use by the repair, replacement, adjustment or removal of “your product” or “your work” or your fulfilling the terms of the contract or agreement.

- 9. “Insured contract” means:

\* \* \*

- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for “bodily injury” or “property damage” to a third person or organization, provided the “bodily injury” or “property damage” is caused, in whole or in part, by you or those acting on your behalf. However, such part of a contract or agreement shall only be considered an “insured contract” to the extent your assumption of the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement [As amended by the **AMENDMENT OF INSURED CONTRACT DEFINITION** endorsement.]]

\* \* \*

13. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

\* \* \*

15. “Pollutants” mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. “Products-completed operations hazard”:

a. Includes all “bodily injury” and “property damage” occurring away from premises you own or rent and arising out of “your product” or “your work” except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, “your work” will be deemed completed at the earliest of the following times:
  - (a) When all of the work called for in your contract has been completed.
  - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
  - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include “bodily injury” or “property damage” arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the “loading or unloading” of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that

products-completed operations are subject to the General Aggregate Limit.

**17. “Property damage” means:**

- a.** Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b.** Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the “occurrence” that caused it.

For the purposes of this insurance, electronic data is not tangible property. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

\* \* \*

**21. “Your product”:**

**a. Means:**

- (1)** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (a)** You;
  - (b)** Others trading under your name; or
  - (c)** A person or organization whose business or assets you have acquired; and
- (2)** Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**b. Includes:**

- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your product”; and
- (2)** The providing of or failure to provide warnings or instructions.

**c. Does not include vending machines or other property rented to or located for the use of others but not sold.**

**22. “Your work”:**



a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your work”; and
- (2) The providing of or failure to provide warnings or instructions.

3.10 The Balaji Logistics CGL Policy includes Form IL 01 23 11 13, Washington Changes – Defense Costs, which provides:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**WASHINGTON CHANGES – DEFENSE COSTS**

This endorsement modifies insurance provided under the following:

\* \* \*

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

A. The provisions of Paragraph B. are added to all Insuring Agreements that set forth a duty to defend under:

1. Section I of the Commercial General Liability, Commercial Liability Umbrella, Electronic Data Liability, Farm, Liquor Liability, Owners And Contractors Protective Liability, Pollution Liability, Products/Completed Operations Liability, Product Withdrawal, Medical Professional Liability, Railroad Protective Liability and Underground Storage Tank Coverage Parts, Auto Dealers Coverage Form and the Farm Umbrella Liability Policy;

\* \* \*

B. If we initially defend an insured (“insured”) or pay for an insured’s (“insured’s”) defense but later determine that none of the claims (“claims”), for which we provided a defense or defense costs, are covered under this insurance, we have the right to reimbursement for the defense costs we have incurred.

1 The right to reimbursement under this provision will only apply to the  
2 costs we have incurred after we notify you in writing that there may not  
3 be coverage and that we are reserving our rights to terminate the defense  
or the payment of defense costs and to seek reimbursement for defense  
costs.

4 3.11 The Balaji Logistics CGL Policy includes Form WN CG 24 26 04 13 –  
5 Amendment of Insured Contract Definition, which provides:

6 **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE**  
7 **READ IT CAREFULLY.**

8 **AMENDMENT OF INSURED CONTRACT DEFINITION**

9 This endorsement modifies insurance provided under the following:

10 **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

11 \* \* \*

12 The definition of “insured contract” in the Definitions section is replaced by the  
13 following:

14 “Insured contract” means:

- 15 a. A contract for a lease of premises. However, that portion of the  
16 contract for a lease of premises that indemnifies any person or  
17 organization for damage by fire to premises while rented to you  
18 or temporarily occupied by you with permission of the owner is  
19 not an “insured contract”;
- 20 b. A sidetrack agreement;
- 21 c. Any easement or license agreement, except in connection with  
22 construction or demolition operations on or within 50 feet of a  
23 railroad;
- 24 d. An obligation, as required by ordinance, to indemnify a  
municipality, except in connection with work for a municipality;
- 25 e. An elevator maintenance agreement;
- 26 f. That part of any other contract or agreement pertaining to your  
business (including an indemnification of a municipality in  
connection with work performed for a municipality) under which  
you assume the tort liability of another party to pay for “bodily  
injury” or “property damage” to a third person or organization,  
provided the “bodily injury” or “property damage” is caused, in  
whole or in part, by you or by those acting on your behalf.  
However, such part of a contract or agreement shall only be  
considered an “insured contract” to the extent your assumption of

the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for “bodily injury” or “property damage” arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

### C. The Balaji Logistics Umbrella Policy

3.12 Western National issued policy number UMB 1045000 01 to Balaji Logistics Inc., effective May 29, 2022 to May 29, 2023 (hereinafter “Balaji Logistics Umbrella Policy”).

3.13 The Balaji Logistics Umbrella Policy was written on Form CU 00 01 04 13 and had a Coverage A Limit of \$2,000,000 per occurrence, an Aggregate Limit for Liability Coverage except with respect to covered autos of \$2,000,000, and a Retained Limit of \$10,000 for any one occurrence or offense.

3.14 The Balaji Logistics CGL Policy is listed on the Balaji Logistic Umbrella Policy’s Schedule of Underlying Insurance.

3.15 The insuring agreement for Coverage A of the Balaji Logistics Umbrella policy includes the following language:

## SECTION I – COVERAGES

### COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

#### 1. Insuring Agreement

a. We will pay on behalf of the insured the “ultimate net loss” in excess of the “retained limit” because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking damages for such “bodily injury” or “property damage” when the “underlying insurance” does not provide coverage or the limits of “underlying insurance” have been exhausted. When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other “suit” seeking damages to which this insurance may apply. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. At our discretion, we may investigate any “occurrence” that may involve this insurance and settle any resultant claim or “suit” for which we have the duty to defend. But:

(1) The amount we will pay for the “ultimate net loss” is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B**. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

b. This insurance applies to “bodily injury” or “property damage” that is subject to an applicable “retained limit”. If any other limit, such as a sublimit, is specified in the “underlying insurance”, this insurance does not apply to “bodily injury” or “property damage” arising out of that exposure unless that limit is specified in the Declarations under the Schedule of “underlying insurance”.

c. This insurance applies to “bodily injury” and “property damage” only if:

(1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;

(2) The “bodily injury” or “property damage” occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1.a. of Section II – Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

3.16 The Coverage A Exclusions include the following:

## 2. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

“Bodily injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” resulting from the use of reasonable force to protect persons or property.

### b. Contractual Liability

“Bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an “insured contract”, provided the “bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an “insured contract”, reasonable attorneys’ fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of “bodily injury” or “property damage”, provided:
  - (a) Liability to such party for, or for the cost of, that party’s defense has also been assumed in the same “insured contract”; and

(b) Such attorneys’ fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

\* \* \*

**m. Damage To Property**

“Property damage” to:

- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the “property damage” arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because “your work” was incorrectly performed on it.

Paragraphs (1)(b), (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to “property damage” included in the “products-completed operations hazard.”

**n. Damage To Your Product**

“Property damage” to “your product” arising out of it or any part of it.

**o. Damage To Your Work**

“Property damage” to “your work” arising out of it or any part of it and included in the “products-completed operations hazard”.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**p. Damage To Impaired Property Or Property Not Physically Injured**

“Property damage” to “impaired property” or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in “your product” or “your work”; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to “your product” or “your work” after it has been put to its intended use.

3.17 The Balaji Logistics Umbrella Policy includes the following definitions:

## SECTION V – DEFINITIONS

\* \* \*

3. “Bodily injury” means bodily injury, disability, sickness or disease sustained by a person, including death resulting from any of these at any time. “Bodily injury” includes mental anguish or other mental injury resulting from “bodily injury”.

\* \* \*

8. “Impaired property” means tangible property, other than “your product” or “your work”, that cannot be used or is less useful because:

- a. It incorporates “your product” or “your work” that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement; if such property can be restored to use by the repair, replacement, adjustment or removal of “your product” or “your work” or your fulfilling the terms of the contract or agreement.

9. “Insured contract” means:

- g. That part of any contract or agreement entered into, as part of your business, agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for “bodily injury” or “property damage” to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement [As amended by the **AMENDMENT OF INSURED CONTRACT DEFINITION** endorsement.]]

\* \* \*

13. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

\* \* \*

15. “Pollutants” mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

17. “Products-completed operations hazard”:



a. Includes all “bodily injury” and “property damage” occurring away from premises you own or rent and arising out of “your product” or “your work” except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, “your work” will be deemed completed at the earliest of the following times:
  - (a) When all of the work called for in your contract has been completed.
  - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
  - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include “bodily injury” or “property damage” arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the “loading or unloading” of that vehicle by any insured; or
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials;

18. “Property damage” means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the “occurrence” that caused it.

19. “Retained limit” means the available limits of “underlying insurance” scheduled in the Declarations or the “self-insured retention”, whichever applies.



1       **20.**     “Self-insured retention” means the dollar amount listed in the  
 2       Declarations that will be paid by the insured before this insurance  
 3       becomes applicable only with respect to “occurrences” or offenses not  
 4       covered by the “underlying insurance”. The “self-insured retention” does  
 5       not apply to “occurrences” or offenses which would have been covered  
 6       by “underlying insurance” but for the exhaustion of applicable limits.

7                               \* \* \*

8       **23.**     “Ultimate net loss” means the total sum, after reduction for recoveries or  
 9       salvages collectible, that the insured becomes legally obligated to pay as  
 10       damages by reason of settlement or judgments or any arbitration or other  
 11       alternate dispute method entered into with our consent or the “underlying  
 12       insurer's” consent.

13       **24.**     “Underlying insurance” means any policies of insurance listed in the  
 14       Declarations under the Schedule of “underlying insurance”.

15       **25.**     “Underlying insurer” means any insurer who provides any policy of  
 16       insurance listed in the Schedule of “underlying insurance”.

17                               \* \* \*

18       **27.**     “Your product”:

19       **a.**       Means:

20               **(1)**   Any goods or products, other than real property,  
 21               manufactured, sold, handled, distributed or disposed of  
 22               by:

23               **(a)**   You;

**(b)**   Others trading under your name; or

**(c)**   A person or organization whose business or assets  
                  you have acquired; and

**(2)**   Containers (other than vehicles), materials, parts or  
                  equipment furnished in connection with such goods or  
                  products.

**b.**       Includes:

**(1)**   Warranties or representations made at any time with  
                  respect to the fitness, quality, durability, performance or  
                  use of “your product”; and

**(2)**   The providing of or failure to provide warnings or  
                  instructions.

**c.**       Does not include vending machines or other property rented to or  
                  located for the use of others but not sold.

24       **28.**     “Your work”:

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your work”; and
- (2) The providing of or failure to provide warnings or instructions.

3.18 The Balaji Logistics Umbrella Policy includes Form IL 01 23 11 13, Washington Changes – Defense Costs, which provides:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**WASHINGTON CHANGES – DEFENSE COSTS**

This endorsement modifies insurance provided under the following:

\* \* \*

**COMMERCIAL LIABILITY UMBRELLA COVERAGE PART**

A. The provisions of Paragraph B. are added to all Insuring Agreements that set forth a duty to defend under:

- 1. Section I of the Commercial General Liability, Commercial Liability Umbrella, Electronic Data Liability, Farm, Liquor Liability, Owners And Contractors Protective Liability, Pollution Liability, Products/Completed Operations Liability, Product Withdrawal, Medical Professional Liability, Railroad Protective Liability and Underground Storage Tank Coverage Parts, Auto Dealers Coverage Form and the Farm Umbrella Liability Policy;

\* \* \*

B. If we initially defend an insured (“insured”) or pay for an insured’s (“insured’s”) defense but later determine that none of the claims (“claims”), for which we provided a defense or defense costs, are covered under this insurance, we have the right to reimbursement for the defense costs we have incurred.

The right to reimbursement under this provision will only apply to the costs we have incurred after we notify you in writing that there may not be coverage and that we are reserving our rights to terminate the defense or the payment of defense costs and to seek reimbursement for defense costs.

3.19 The Balaji Logistics Umbrella Policy includes Form CU 24 30 04 13, Amendment of Insured Contract Definition, which provides:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**AMENDMENT OF INSURED CONTRACT DEFINITION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL LIABILITY UMBRELLA COVERAGE PART**

Paragraph 9. of the **Definitions** section is replaced by the following:

9. “Insured contract” means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with **permission of the owner is not an “insured contract”**;
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your “employees”, of any “auto”. However, such contract or agreement shall not be considered an “insured contract” to the extent that it obligates you or any of your “employees” to pay for “property damage” to any “auto” rented or leased by you or any of your “employees”;
- g. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which

you assume the tort liability of another party to pay for “bodily injury” or “property damage” to a third person or organization, provided the “bodily injury” or “property damage” is caused, in whole or in part, by you or by those acting on your behalf. However, such part of a contract or agreement shall only be considered an “insured contract” to the extent your assumption of the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraphs f. and g. do not include that part of any contract or agreement:

- (1) That indemnifies a railroad for “bodily injury” or “property damage” arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That pertains to the loan, lease or rental of an “auto” to you or any of your “employees”, if the “auto” is loaned, leased or rented with a driver; or
- (3) That holds a person or organization engaged in the business of transporting property by “auto” for hire harmless for your use of a “covered auto” over a route or territory that person or organization is authorized to serve by public authority.

#### IV. ACTUAL AND JUSTICIABLE CONTROVERSIES

##### A. Balaji Logistics CGL Policy

4.1 There is an actual and justiciable controversy as to whether the claims in the ACF Lawsuit allege “bodily injury” or “property damage” within the Coverage A Insuring Agreement.

4.2 There is an actual and justiciable controversy as to whether the claims in the ACF Lawsuit allege an “occurrence” within the Coverage A Insuring Agreement.

4.3 There is an actual and justiciable controversy as to whether the claims in the ACF Lawsuit are excluded by Coverage A, Exclusion a.

4.4 There is an actual and justiciable controversy as to whether the claims in the ACF Lawsuit are excluded by Coverage A, Exclusion b.

1           4.5     There is an actual and justiciable controversy as to whether the claims in the  
2 ACF Lawsuit are excluded by Coverage A, Exclusion j.5.

3           4.6     There is an actual and justiciable controversy as to whether the claims in the  
4 ACF Lawsuit are excluded by Coverage A, Exclusion j.6.

5           4.7     There is an actual and justiciable controversy as to whether the claims in the  
6 ACF Lawsuit are excluded by Coverage A, Exclusion k.

7           4.8     There is an actual and justiciable controversy as to whether the claims in the  
8 ACF Lawsuit are excluded by Coverage A, Exclusion l.

9           4.9     There is an actual and justiciable controversy as to whether the claims in the  
10 ACF Lawsuit are excluded by Coverage A, Exclusion m.

11          4.10    There is an actual and justiciable controversy as to whether Western National  
12 has a right to reimbursement for all costs and fees expended in defense Balaji Logistics for the  
13 claims alleged in the ACF Lawsuit.

14 **B.     Balaji Logistics Umbrella Policy**

15          4.11    There is an actual and justiciable controversy as to whether the claims in the  
16 ACF Lawsuit allege “ultimate net loss” in excess of the “retained limit” within the Coverage A  
17 Insuring Agreement.

18          4.12    There is an actual and justiciable controversy as to whether the underlying  
19 insurance does not provide coverage or the limits of underlying insurance have been exhausted.

20          4.13    There is an actual and justiciable controversy as to whether the claims in the  
21 ACF Lawsuit allege “bodily injury” or “property damage” within the Coverage A Insuring  
22 Agreement.

1           4.14   There is an actual and justiciable controversy as to whether the claims in the  
2 ACF Lawsuit allege an “occurrence” within the Coverage A Insuring Agreement.

3           4.15   There is an actual and justiciable controversy as to whether the claims in the  
4 Balaji Logistics Lawsuit are excluded by Coverage A, Exclusion a.

5           4.16   There is an actual and justiciable controversy as to whether the claims in the  
6 ACF Lawsuit are excluded by Coverage A, Exclusion b.

7           4.17   There is an actual and justiciable controversy as to whether the claims in the  
8 ACF Lawsuit are excluded by Coverage A, Exclusion m.5.

9           4.18   There is an actual and justiciable controversy as to whether the claims in the  
10 ACF Lawsuit are excluded by Coverage A, Exclusion m.6.

11          4.19   There is an actual and justiciable controversy as to whether the claims in the  
12 ACF Lawsuit are excluded by Coverage A, Exclusion n.

13          4.20   There is an actual and justiciable controversy as to whether the claims in the  
14 ACF Lawsuit, other than the Lateral Support Claims, are excluded by Coverage A, Exclusion o.

15          4.21   There is an actual and justiciable controversy as to whether the claims in the  
16 ACF Lawsuit are excluded by Coverage A, Exclusion p.

17          4.22   There is an actual and justiciable controversy as to whether Western National  
18 has a right to reimbursement for all costs and fees expended in defense of Balaji Logistics for  
19 all claims alleged in the ACF Lawsuit.

20                   **V. CLAIM FOR DECLARATORY JUDGMENT**

21          5.1    Western National incorporates by reference and re-alleges the allegations  
22 contained in the preceding paragraphs.

1           5.2     Plaintiff Western National seeks a judicial declaration of rights and duties under  
2 the Balaji Logistics CGL Policy and the Balaji Logistics Umbrella Policy pursuant to 28 U.S.C.  
3 §§ 2201 and 2202.

4           5.3     Plaintiff Western National is entitled a declaratory judgment in its favor, namely  
5 that it has no duty to defend or indemnify Balaji Logistics for the claims alleged against it in  
6 the ACF Lawsuit.

7           **VI. CLAIM FOR REIMBURSEMENT OF DEFENSE COSTS INCURRED**

8           6.1     Western National incorporates by reference and re-alleges the allegations  
9 contained in the preceding paragraphs.

10          6.2     Both the Balaji Logistics CGL Policy and the Balaji Logistics Umbrella Policy  
11 contain the same endorsement entitled Washington Changes – Defense Costs, which provides:

12                   **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT**  
13                   **CAREFULLY.**

14                   **WASHINGTON CHANGES – DEFENSE COSTS**

15           This endorsement modifies insurance provided under the following:

16                   \* \* \*

17           **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

18           **A.**     The provisions of Paragraph B. are added to all Insuring Agreements that  
19 set forth a duty to defend under:

20           **1.**     Section I of the Commercial General Liability, Commercial  
21 Liability Umbrella, Electronic Data Liability, Farm, Liquor  
22 Liability, Owners And Contractors Protective Liability, Pollution  
23 Liability, Products/Completed Operations Liability, Product  
Withdrawal, Medical Professional Liability, Railroad Protective  
Liability and Underground Storage Tank Coverage Parts, Auto  
Dealers Coverage Form and the Farm Umbrella Liability Policy;

                  \* \* \*

**B.**     If we initially defend an insured (“insured”) or pay for an insured’s  
          (“insured’s”) defense but later determine that none of the claims  
          (“claims”), for which we provided a defense or defense costs, are

covered under this insurance, we have the right to reimbursement for the defense costs we have incurred.

The right to reimbursement under this provision will only apply to the costs we have incurred after we notify you in writing that there may not be coverage and that we are reserving our rights to terminate the defense or the payment of defense costs and to seek reimbursement for defense costs.

6.3 If this court determines that the claims alleged against Balaji Logistics in the ACF Lawsuit are not covered under the Balaji Logistics CGL Policy and the Balaji Logistics Umbrella Policy, Western National is entitled to reimbursement of any and all costs it has incurred (after notifying said defendant in writing of its reservation of rights in this regard) in defending each party that the Court determines is not entitled to a defense.

## **VII. REQUEST FOR RELIEF**

WHEREFORE, Western National Mutual Insurance Company, having specifically alleged the foregoing, requests the following relief:

1. For a determination of the rights and duties of the parties hereto under the insurance policies;

2. For a declaration that Western National does not owe a duty to defend or indemnify Balaji Logistics for all claims alleged against it in the ACF lawsuit;

3. For a declaration that Western National is permitted to withdraw from the defense of Balaji Logistics for all claims alleged against it in the ACF Lawsuit;

4. For a declaration that Western National is entitled to reimbursement of all defense costs incurred in defending Balaji Logistics from all claims alleged against it in the ACF lawsuit;

5. For entry of judgment in the amount of defense costs incurred in defending Balaji Logistics from all claims alleged against it in the ACF lawsuit;



SOHA & LANG, P.S.  
ATTORNEYS AT LAW  
1325 FOURTH AVENUE, STE 940  
SEATTLE, WASHINGTON 98101  
(206) 624-1800/FAX (206) 624-3585